2391.

SUPREME COURT OF THE UNITED STATES.

No. 117.

THOMAS BOONE'S HEIRS, COMPLAINANTS,

VERSUS

WILLIAM CHILES, ET AL.

ON CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

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UNITED STATES OF AMERICA, *7th Circuit, Kentucky District.* } *November term*, 1833, *November 29th.*

THOMAS BOONE'S HEIRS, *against* WILLIAM CHILES, & OTHERS. } Complainants. In Chancery. Defendants.

On the 25th of January, 1823, Thomas Boone filed his bill in chancery in this court as followeth, (here insert the original bill.) The obligation of Searcy to Hoy, assigned to George Boone, and by them to the complainants mentioned in the bill, reads and bears the assignments following, (here insert them.) After the commencement of this suit, a writ of error was prosecuted by the parties to the record of the Bourbon circuit court, and the decree in favor of Chiles was reversed and remanded by the court of appeals, with leave to make other parties, and for further proceedings.

The complainant died, and the suit was revived in August, 1830. The complainants amended their bill, showing a reversal of the decree, and making the heirs of Hoy defendants, and praying a conveyance from them.

The complainant also filed an amended bill, making the heirs of John South defendants.

November 16th, 1830, the defendant, Chiles, filed the following plea in abatement, (here insert that marked C,) which, at the May term, 1831, was overruled, an amended bill was filed against the heirs of Hezekiah Boone, as followeth, to wit, (here insert that marked D.) On the 31st of July, 1832, an amended bill was filed against the heirs of George Boone, in the words following, (here insert E, as before it was scored.) The defendant Chiles, filed for answer as followeth, to wit, (here insert F.) One of the resident defendants who were made defendants as heirs of George Boone, answered disclaiming any interest in the land, and there is no proof that they, or either of them, are or are not the heirs of George Boone. The cause being prepared and heard upon the bills, answers, depositions and exhibits, and the court suggesting that the last mentioned amended bill was defective, the attorney of the complainants asked leave and amended that bill as followeth, (here insert it as it now stands.)

1st. The court being then divided, and the judges opposed in opinion as to the jurisdiction over the case, and unable therefore to render a decree on the merits, they resolve to adjourn that question to the Supreme Court, to wit: under all the circumstances appearing as above, can this court entertain cognizance of the case?

2d. The judges were also opposed in opinion, on the point whether the complainants were entitled to a decree in the absence of any proof that the persons made defendants in the amended bill as heirs of George Boone, were in fact his heirs, both of which points occurred and became material to the decision of this case.

Memo. In this case, after the court had heard the cause on its merits, and had intimated at a former day of the term, that the court had not jurisdiction, by reason of the heirs of George Boone not appearing upon the bill, to be within the jurisdiction of the court, and to-day the complainants moved the court to amend their bill, and to allege the citizenship of Boone's heirs, which motion was granted by the court: whereupon, the defendants' counsel moved the court to remand the case to the rules, and that defendants' have leave to file their answers or pleas to the amendment thus allowed; but the court overruled the motion of the defendant to remand the cause to the rules and dividing in opinion as to the jurisdiction of this court over the cause, after the amendment was made, directed the question of jurisdiction to be adjourned to the Supreme Court; to which opinions of the court in permitting the amendment after the cause was heard, and in not remanding the cause to the rules for the defendants to answer as to said amendment, and in adjourning the question upon the state of pleading in the case, the defendants, by their attorney, accepts and prays the court to sign and seal this their bill of exceptions.

—— ——, [SEAL.]
JOHN BOYLE, [SEAL.]

The following are the papers referred to in the aforegoing adjourned question, to wit:

BOONE,
vs.
CHILES, &c.

Original bill. To the honorable the circuit court of the United States for the

district of Kentucky, in chancery, sitting: Thomas Boone, a citizen of the State of Pennsylvania, complaining, showeth, that a certain Reuben Searcy being entitled to a settlement of 400 acres of land on Stoner, in the present county of Bourbon, and a pre-emption of 1,000 acres adjoining, in due form of law obtained the certificate of the commissioner accordingly, and engaged a certain John Martin to perfect the title for one half the land; that the said Searcy, on the 24th day of September, 1781, for a valuable consideration, sold seven hundred acres, being his half of the settlement and pre-emption aforesaid, to a certain William Hoy, and executed his bond for a conveyance accordingly, and likewise assigned to Hoy the plat and certificate of survey, which enabled Hoy on the day of July, 1785, to perfect the title to the whole tract in his own name; but Hoy had previously, to wit, on the day of December, 1781, assigned Searcy's bond to a certain George Boone, who, on the day of April, 1785, assigned it to your orator. Thus your orator became invested with a clear equity to one half of the said settlement and pre-emption, and Martin and his alienees have long enjoyed in severalty their half, which your orator does not wish to invade, but is content to hold the parcels hereafter mentioned, as decreed to the defendant Chiles. Your orator would further state, that he has never in any shape divested himself of this equity. It is true that, on the 30th day of November, 1802, he gave to a certain Hezekiah Boone, a written assurance that your orator would convey to him, provided he should conclude to buy, and should, within four years from that date, pay to your orator seven hundred pounds, and a fund was mentioned, out of which, it was contemplated to pay the price; but Hezekiah Boone declined the purchase, did not pay one cent of the price, and devoted the contemplated funds to other purposes. Thus that arrangement long ceased to operate.

But a certain William Chiles, Hezekiah Boone, George Boone, Nicholas Smith, sen., Nicholas Smith, jr., Jacob Smeltzer, George W. Baylor, Jacob Smith, John Evatt, and Joseph Comins, all of whom are citizens of Kentucky, and made defendants bill, except the said George Boone, who has since departed this life, combining, &c., to defraud and injuire your orators in this behalf, and deprive him of his title, and detain from him the use of his land aforesaid, the said Chiles and Boone's on the day of 18 , commenced their suit in chancery in the Bourbon circuit court, upon their bill filed, in the name of themselves, and your orator, against the heirs of the said Hoy, alleging the title from Searcy to your orator as already set forth, and charging that your orator had sold to the said Hezekiah, and that he had sold to the said Chiles, and that your orator and the other complainants desired a title to be made to the said Chiles, praying that the heirs of Hoy should convey, &c. &c., and thereupon such proceedings were had; that, at the term of that court, a decree was accordingly prouounced, and in pursuance of that decree, and the order of the said court, a conveyance was made to the said Chiles by a commissioner appointed by the said court, of two parcels of the said settlement and pre emption, the said Chiles having at the same time full knowledge of the purchase of your orator, and of the conditional character of his contract with Hezekiah, and that those conditions and terms had never been fulfilled on the part of Hezekiah, the said Martin and his alienees holding the residue as their share; all which will more fully appear by reference to the bill, exhibits, decree, and deed, remaining of record in the said court, to a transcript of which your orator

refers as a part of this bill. He would not, however, be understood to admit as genuine or correct an instrument on file in that cause, purporting to be the agreement between your orators and Hezekiah Boone; on the contrary, he believes the original in possession of Chiles, and withheld for the purpose of imposition and in terms different.

Your orator distinctly charges that the suit aforesaid was fraudulently instituted, and prosecuted without his knowledge or approbation; that Chiles has no just claim, nor did your orator ever assent to a decree or conveyance in his favor; and that he never did sell or convey to any person any portion of that land, nor had either of the Boone's authority from him on this subject, except that George was authorized by him to obtain a title from Hoy to your orator; and the defendant Chiles not only refuses to convey to your orator, although perfectly apprised of his equity, but has even made some engagement to maintain the defendants Smeltzer, Smiths, Evatt, Comins, and Baylor, in detaining the possession and enjoying the profits for a long time past, still refusing to surrender.

All which actings, &c., are contrary to equity, &c. In tender consideration whereof, &c., &c. To the end therefore, that the defendants may true and perfect answer make, to all and singular the premises aforesaid, as fully if again repeated, &c., more especially that the defendant Chiles may produce the bond from Searcy to Hoy, or say what has become of it, and why he destroyed it, or lost it, &c. Your orator prays your honor by your decree, to compel the defendant Chiles, or such of the defendants as now hold the title, to convey to him the tracts described by the deed under the decree to Chiles; that the defendants, or those who have received them, may account for the rent and profits, and that you grant such other and further relief as this case may require. May it please your honors to grant, yrs. spa., &c., &c.

CRITTENDEN and
HAGGON.

Searcy to Hoy, ond, &c. Know all men by these presents, that I, Reuben Searcy, of the county of Fayette, are held and firmly bound unto William Hoy, of the county of Lincoln, and State of Virginia, in *in* the penal sum of fifty thousand pounds current money of Virginia, to which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, unto the said William Hoy, he, his heirs, or assigns, this twenty-fourth day of September, one thousand seven hundred and eighty-one.

The condition of the above is such, that if the above bound Reuben Searcy shall well and truly make, or cause to be made, as soon as deeds is made to lands in this country in general, a good and sufficient deed for seven hundred acres of first rate land laying in Fayette county, on Licking creek, betwixt John Martin's station, and Ruddell's station, it being part of a settlement and pre-emption that John Martin cleared out on the half for said Reuben Searcy, and the said Hoy takes his first choice of the land, then the above obligation to be void, otherwise to remain and be in full force and virtue.

(Signed) REUBEN SEARCY, [SEAL.]

Signed, sealed and delivered, in presence of us:

JESSE CARTWRIGHT.
CALEB CALLOWAY,

A copy att. JNO. S. BOWLING, *D. C. B. C. C.*

The following are the endorsements on the foregoing bond, to wit:

Hoy's assignment to Geo. Boone. I, William Hoy, assign over the within bond unto George Boone, his heirs or assigns, and said Hoy obliges himself, his heirs, executors, and administrators, as *shourety* to within bond; and if the within lands cannot be obtained by reason of a prior claim, then and in that case seven hundred acres equal in quality and convenience shall discharge the within bond.

Witness my hand, this fifteenth day of December, 1781.

(Signed) WILLIAM HOY.

Test:

JOHN TURNER.
NATH'L. HART.

George Boone's assignment to Thomas Boone. I do hereby assign over all my right, title, and claim, of the within bond unto Thomas Boone, his heirs or assigns, without recourse to the same, that is to say, that I, the said George Boone, are no ways obligated if the said William Hoy, or his heirs sufficient to make good the within bond; but if the said William Hoy, or his heirs should not be able, then I George Boone, do bind myself, my heirs, to make good the same unto the said Thomas Boone, or his heirs or assigns.

Witness my hand this 30th day of April, 1783.

(Signed) GEORGE BOONE.

Att. JNO. S. BOWLING, *D. C. B. C. C.*

Test: WILLIAM HUNTER.

Plea in abatement. The special plea of William Chiles to a bill, an amended bills in chancery, filed against him and others, in the circuit court of the United States for the district of Kentucky, by Lincoln Boone and others, calling themselves heirs of Thomas Boone, deceased.

This defendant, saving and reserving, &c., and not confessing any of the matters stated in said amended bills, states that he is not bound further to answer to said suit, or original, or amended bills thereof, because he saith that this court hath not jurisdiction of the proper parties thereto, to render a decree herein asserting the rights of this defendant, and that on account of the following defect of parties, for he saith that in addition to the children and heirs of William Hoy, there was another daughter named Kezia Hoy, who intermarried with a certain Hugh Brown, by whom she had eight or nine children, and she has departed this life, and her children are still living, and are residents and citizens of the State of Ohio at the time of filing said amendment, and yet are sued now, and was at time of the amendment; and that said Jones Hoy, named in said amended bill, is a citizen and resident *and resident* of the State of Missouri. That said Theodosia Hoy named in said amended bill is dead, after her intermarriage with Laurence Flournoy, and that she has left the three sons named in the amended bill, and one other named Rowland Flournoy, and these of them named, to wit: those named in the amended bill of the complainants are citizens and residents of the State of Missouri, and the heirs of said Elizabeth South, heretofore made defendants, to wit:

Are citizens and residents of said State of Missouri, and this defendant further saith, that before the commencement of this suit, a suit in chancery was brought in the Bourbon circuit court for the State of Kentucky, in the

name of said Thomas Boone, ancestor of present complainants and others, against the heirs of said William Hoy, in which a decree was rendered against the said heirs of William Hoy, which decree was afterwards reversed in the court of appeals for the State of Kentucky, and the cause remanded for further proceedings in the inferior court, wherein the heirs of said Thomas Boone have filed their bill of revivor, and the cause is still pending in said court, which has complete jurisdiction thereof; and this defendant annexes to this plea as part thereof, the first and additional record of the new proceedings therein, so far as they have now progressed, duly exemplified as part of this his plea; and he avers that the equity and matters, and things attempted to be litigated in this suit, and the same now in contest in the Bourbon circuit court, and not other and different; wherefore he insists that for those causes the bill of the complainants ought to be abated and dismissed. And as in duty bound, &c.

WILLIAM CHILES.

Bill of revivor, D. To the honorable the judge of the circuit court of the United States for the district of Kentucky in chancery sitting: Sarah Boone, and others, heirs at law to Thomas Boone, complaining, show that their father Thomas Boone, on the 25th day of January, 1823, being a citizen of the State of Pennsylvania, commenced his suit in chancery in your honorable court, against a certain Hezekiah Boone, and others, praying that the defendants or such of them as held the legal title should convey to him two tracts of land as more particularly described in the said bill; that the said Hezekiah, in due form filed his answer to the said bill; that their said ancestor, Thomas, departed this life, and your complainants, upon their bill filed, revived the said suit, and the same being in progress, the said Hezekiah also departed this life, leaving Solomon Boone, Hiram Boone, Mordicai Boone, Isaiah Boone, Hezakiah Boone, Abigail Smith, the wife of Humphrey Smith, Sally McIlyea, the wife of John McIlyea, Elizabeth Harris, the wife of Richard Harris, Deborah Cunningham, the wife of William Cunningham, his children and heirs at law: Wherefore, your complainants pray that the said children of the said Hezekiah, and the husbands of the said feme coverts be made defendants, and their said suit be revived against them, and that your honors grant to them such relief as previously prayed, &c., &c.

CRITTENDEN, &c.,
for Complainants.

Amended bill E. To the honorable the circuit court of the United States for the seventh circuit and district of Kentucky in chancery: Richard Boone and others, heirs at law of Thomas Boone, in addition to the allegation of their several bills on file against William Chiles and others, defendants, would say that they are now informed (and have reason to believe their information is correct) that Newland and wife had not conveyed their interest in the tract of land to the defendant Chiles at the time of filing their bills in this cause, or any or either of them, and that the allegations of their bill in this respect is untrue. But the title of Cealia Newland, as it descended from her father, still abides with her. If, however, it shall be found that Newland and wife had conveyed, they charge that their deed was to a certain Green Clay, and that the deed made by Clay to Chiles was predicated upon the assertion of Chiles; that he had right and authority under Thomas Boone to receive the same, and was procured by Chiles

under the assumed and improper use of the name of the said Thomas, and in virtue of assurances that he had acquired the right of the said Thomas, and not for a valuable or fair consideration actually paid or promised.

Your orators would further state, that the said Reuben Searcy has long since departed this life intestate, without issue or inheritable blood known to them; at least they are very certain that he has no heirs within the limits of the State of Kentucky.

Your orators would further state, that George Boone, whose name is mentioned in the original bill, has long since departed this life, and that his next of kin and lawful heirs are Mariam Steele, the wife of Joseph Steele, his daughter, and Greenup, Simpson, and Matilda, and Eliza, and America, and Sarah, and Erasmus, and George, and James, and Alfred Simpson, his grandchildren, being the issue of his daughter; and if there be other heirs of the said G. Boone, your complainants are certain that they do not reside in Kentucky, upon whom his interest, if indeed he had any by law, descended, and who, with the said Joseph, and the said Newland and wife, are made defendants to this bill. But he is assured, and so charges the fact, that neither George Boone, or any of his heirs have asserted, or pretended any claim or interest in the land, but expressly concede the claim of your orators, as set forth in the original bill.

They pray, as set forth in their former bills, &c.

CRITTENDEN, &c.

Answer of Wm. Chiles.

The separate answer of William Chiles to a bill in chancery exhibited against him and others by Thomas Boone, in the circuit court of the United States for the district of Kentucky, for answer to said bill, saith—

That it is true Reuben Searcy was entitled to a settlement and pre-emption, and engaged a John Martin to perfect the title for one half, and did, in September, 1781, sell and give his bond for half thereof to William Hoy; that Hoy obtained the patent in his own name, and assigned Searcy's bond by special assignment to George Boone, who assigned it to the complainant, as stated in the bill; but is not true that Martin and his alienees even enjoyed any part thereof unless Hoy was his alienee, which he believes to be the fact as he is informed, and believes that Hoy purchased of Martin his half and thus obtained the patent; but this defendant denies that all the fourteen hundred acres ever was possessed by any person holding under Hoy's title; on the contrary, a great proportion is possessed under the claims of George Ruddle, John Ruddle, the former an elder patent, and both have held possession for thirty years adversely to Hoy's title; also part is held under the claims of John Hingston, and a claim in the name of Flournoy, so that in fact there is not one half the possession of which is held under Hoy, and which now can be the subject of controversy. This defendant does not admit true that the complainant never stripped himself of his title, but at the time stated in the bill he did sell it to Hezekiah Boone, and gave the instrument of writing to that effect, which is herewith filed and referred to as part of this answer; and it is not true, as this defendant believes, that the complainant did receive nothing as will hereafter be shown. This defendant denies any combination with his co-defendants, Nicholas Smith, Jacob Smeltzer, George W. Baylor, Jacob Smith, John Evalt, and Joseph Cummins, or either of them, in his purchase, nor had any of them any thing to do with his purchase till after it was made. For this defendant, on the

30th day of , 1817, purchased of said Hezekiah Boone, as is witnessed by their written contract as part of this answer. This defendant fully admits that he and the Boone's, to wit: Thomas Boone, the non-complainant, George Boone and Hezekiah Boone, did bring their suit in chancery in the Bourbon circuit court against Hoy's heirs, setting forth the equity derived from Hoy, and did obtain a decree for the title to be made to this defendant, which title is accordingly: and this defendant refers to said record and conveyance as part of his answer, and avers that the Bourbon circuit court had proper and complete jurisdiction of the case, and he pleads and relies on the record as a complete bar to all claim set up by the complainant for the land, whatever his claims may be to any part of the purchase money. This defendant admits full knowledge of the complainants former interest, coupled with a knowledge of his having parted with it, for through him this defendant derived title, and the sale to this defendant was ratified by the complainant's agent for the purpose of giving his assent thereto, as will be seen by a copy of the letter of attorney filed by the complainant himself, and the signature of his agent to the contract, to all which reference is made as part of this answer. But this defendant denies that he then knew, or knows yet, that the terms of the complainant's sale to Hezekiah Boone, has never been complyed with, and insists that the complainant has no right to the land, if they never have. This defendant in reply to the charge that the suit aforesaid was fraudulently instituted, denies it; and in answer to its being done without the complainants knowledge and approbation, and lack of his assent to the decree, and to the want of authority from him, *replies his letter of attorney, his contract in writing with H. Boone, the contract between said Hezekiah, &c., with* this defendant, and also the record which he pleads as an estoppel to the complainant, and bar to all such assertions, which assertions he denies. This defendant admits, that he has made a contract with Nicholas Smith, Peter Smith, and Jacob Smeltzer, in which he understands John Smeltzer had an interest for part of the land; and this defendant avers that they and others have long lived upon the land long before and since the purchase of this defendant, having originally claimed it under a purchase from a certain John South, who pretended to sell Hoy's title, but had no right thereto; this defendant further states, that he has purchased out, and holds the interest of Hoy's heirs, as he can show by title and contract regularly made, and if the complainants should per possibility be entitled to any land, (which is denied,) it cannot be to more than a moiety of what is saved, as the rest is held under other claims, and settled upon long before his purchase, as this defendant will show and prove. But as this defendant is advised, the complainant can have no right to any land as by length of time and total dereliction of his claim for so many years he has laid by, until this defendant was likely to realize something by investigation, and then attempt to set up a stale demand. This defendant further avers, that Hezekiah Boone is the uncle of the complainant, and that the complainant has never made any demand of time for payment for about or near twenty years, notwithstanding his usual intercourse with him, and this defendant relies on this as a presumption of payment and full discharge. He further states, as he is informed and believes, that the father of the complainant, (William Boone,) was executor and administrator of Hezekiah Boone's father, and that on the death of the father of the complainant, the complainant became his executor, and that neither the father of the complainant or complainant himself ever distributed or paid to Heze-

kiah Boone, any part of his father's estate, although he was entitled to a considerable sum, equal perhaps to the purchase money for the land which was understood to go in payment; and that the lands belonging to Hezekiah Boone, was sold by said Thomas Boone, the complainant, on the payment thereof, was to come, and did come to his hands, and this was a payment for the contract which this defendant avers the said Hezekiah never did abandon. But if it should turn out that there is any balance due the complainant, and it should be decided that he is entitled thereto, on settlement of accounts between him and the defendant, Hezekiah Boone, this defendant, as he owes money to said Hezekiah for the same land, is willing it should be decreed to the complainant, or so much thereof, as will be sufficient to discharge such balance; but insist firmly that the complainant has no good claim to the land itself, the legal title to which is held by this defendant, and which he insists he has a right to retain on doing equity to the complainant, if it should be found not to have been done already.

This defendant having fully (as he conceives) answered the complanant's bill, he prays that the same may be dismissed with costs.

WM. CHILES.

FRANKLIN COUNTY, *sct:*

William Chiles personally appeared before the subscriber, a justice of the peace for said county, and made oath that the statements in the foregoing answer, are true to the best of his knowledge and belief.

J. SWIGERT, *J. P.*

October 8, 1823.

Answer of Wm. Chiles.

The answer of William Chiles to the amended bill of Lincoln Boone, and others, styling themselves heirs of Thomas Boone, filed against him and others in the circuit court of the United States, for the seventh circuit and district of Kentucky: This defendant saving and reserving, &c., for answer to so much of said amended bill as he is advised to be material, says that he admits it to be true; that the decree of the Bourbon circuit court obtained by him, has been reserved by the appellate court, for want of proper parties to the bill, and the cause is sent back for further proceedings; and this defendant amended his bill in the Bourbon circuit court, making proper parties, and the present complainants also amended said bill, making Hoy's heirs therein parties, and *and* involving and setting up the same equity which they have done in the present amended bill. This defendant avers that, before the present amended bill, as appears by this record, there was no controversy pending here between the complainants and Hoy's heirs, and this defendant, claiming by any of his conveyances under them, and the controversy as to them, began here at the filing this amended bill for the first time. But, as appears by the record of the Bourbon circuit court, herewith filed by an amended bill, *then* the complainants had set up the same equity, and same matters of controversy, and this defendant insists on that matter as an abatement here, or at least that the court here shall put said complainants to their election as to which they will pursue, and prays that they be compelled to dismission at costs. He admits that William Hoy has long since departed this life, having previously made his last will and testament, as by a copy thereof will appear, and he devised his estate to his children, Jones Hoy, Rowland Hoy, Elizabeth South, then wife of John South, Parthinia, now the wife of John Sappington, Theodosia, the wife of Lawrence Flournoy, Celia, now the

wife of John Newland, Fanny Hoy, an idiot, still living, and another not mentioned by the complainants, to wit, Kezia, since the wife of Hugh Brown. That Rowland died many years since unmarried, childless, and intestate, but of full age, whereby as your orator is advised, his share passed to his mother, brothers, and sisters; and his mother is still living, as far as this defendant is informed, and married to a certain Edward Brown, and she is not made a party. That said Kezia Brown has since died and left the following children, to wit: John Brown, Eliza Brown, Henry Brown, Edward Brown, Margaret Brown, and Sarah Brown, none of whom are made parties. That Mrs. Flournoy is also dead, and has left the following children: Hoy B. Flournoy, Jones Flournoy, Solomon Flournoy, and two others not named, or made parties in the amended bill, to wit: Lawrence Flournoy, and Rowland Flournoy. This defendant admits that, for a valuable consideration, he has bought and paid for, and obtained the title of William Hoy. He further admits, that a certain Green Clay bought and received the title of John Newland and wife, and discovering this to be the fact, he causes the said Green Clay to be made a party to the bill in the Bourbon circuit court, charging him with being a guilty purchaser, knowing of the equity arising from the bond of Hoy. But said Clay put in his answer denying notice, and this defendant not knowing evidence to prove notice, bought of him his share, and paid him therefor, and received his conveyance. This defendant refers to the answer of Clay, in the record of the Bourbon circuit court as part of this answer, and this defendant insists that Clay was an innocent purchaser for a valuable consideration without notice, till his purchase was complete and as to that part. This defendant in the worst event is entitled to protection. He admits that he has received a conveyance for a valuable consideration paid from John Sappington and wife. He insists that this court has not jurisdiction to try and determine the matters in controversy in this suit. He denies that he fraudulently obtained the titles which he holds, either equitable or legal, but insists on his superior claim, and relies on the acquiescence in his claim, and the lapse of time and the staleness of the claim of his adversary. He denies all fraud or combination with which he is charged, and prays to be hence dismissed with his costs in this behalf unjustly expended. He also relies on the previous exercise of the jurisdiction of the Bourbon circuit court a competent tribunal over this subject.

——— ———.

MONTGOMERY COUNTY, *to wit:*

William Chiles maketh oath and saith, that the foregoing answer is true, to the best of his knowledge and belief. Sworn to before me, a justice of the peace of said county, this 8th day of August, 1831.

L. Y. MILLISPAUGH, *J. P. M. C.*

Amended bill. To the honorable the circuit court of the United States for the seventh circuit and district of Kentucky, in chancery; Richard Boone and others, heirs at law of Thomas Boone, in addition to the allegations of their several bills on file against William Chiles and others, defendants, would say, that they are non-informed (and have reason to believe the information is correct) that Newland and wife had not conveyed their interest in the tract of land to the defendant, Chiles, at the time of filing their bills in this cause, or any or either of them, and that the allegations of

their bill in this respect is untrue; but the title of Celia Newland, as it descended from her father, still abides with her. If, however, it shall be found that Newland and wife had conveyed, they charge that their deed was to a certain Green Clay, and that the deed made by Clay to Chiles was predicated upon the assertion of Chiles that he had right and authority under Thomas Boone, to receive the same, and was procured by Chiles under the assumed and improper use of the name of the said Thomas, and in virtue of assurances that he had acquired the right of the said Thomas, and not for a valuable or fair consideration actually paid or promised.

Your orators would further state, that the said Reuben Searcy has long since departed this life intestate, without issue or inheritable blood known to them; at least they are very certain that he has no heirs within the limits of the State of Kentucky.

Your orators would further state, that George Boone, whose name is mentioned in the original bill, has long since departed this life, and that his next of kin and lawful heirs are Mariam Steele, the wife of Joseph Steele, his daughter, and Greenup Simpson, and Matilda, and Eliza, and America, and Sarah, and Erasmus, and George, and James, and Alfred Simpson, his grandchildren, being the issue of his daughter, and if there be other heirs of the said G. Boone, your complainants are certain that they do not reside in Kentucky. Grandchildren of the said George Boone being the children of Simpson deceased, who was a daughter of the said George, and died before him, and all of whom are citizens and residents of Kentucky, except the said Greenup, Matilda, and Eliza, and Simpson, who are citizens and residents of the State of Illinois, and Wm. Boone, a son, who is a citizen and resident of Missouri, upon whom his title, if he had any, descended as his heirs at law. Indeed, your orator has reason to believe the said George left other heirs, residents in Missouri and Illinois, but their names he cannot ascertain of this, however he is certain that the said George, deceased, has left no other heirs, residents or citizens of Kentucky, nor any who he can make defendants to this suit. He prays that the said Steele and wife, and the said Simpson, residents as aforesaid in Kentucky, be made defendants, upon whom his interest, if indeed he had any by law descended; and who, with the said Joseph, and the said Newland and wife, are made defendants to this bill. But he is assured, and so charges the fact, that neither George Boone, or any of his heirs have asserted or pretended any claim or interest in the land, but expressly concede the claim of your orators as set forth in the original bill.

They pray, as set forth in their former bills, &c.

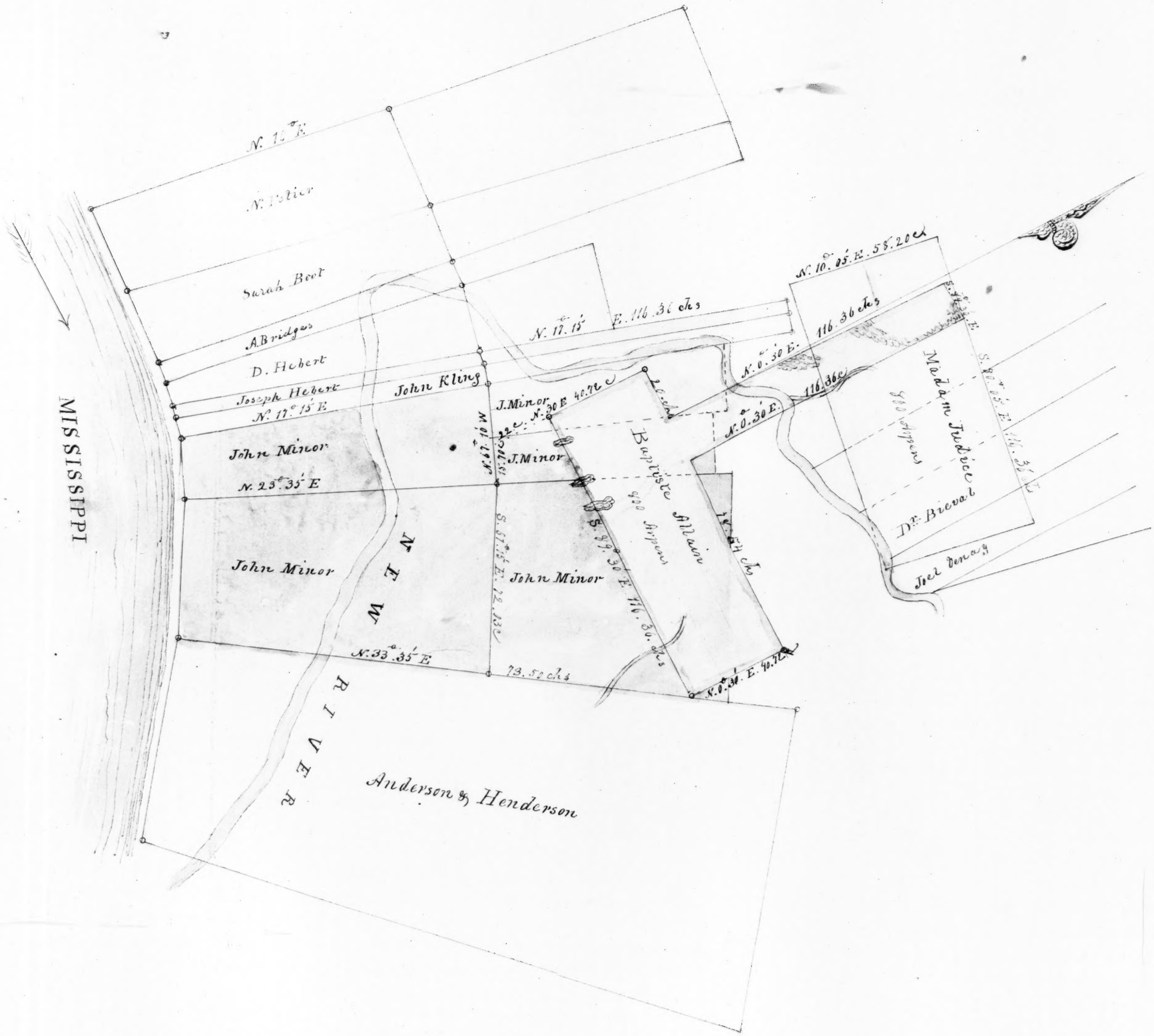
CRITTENDEN, &c.

UNITED STATES OF AMERICA,
7th Circuit District of Kentucky.

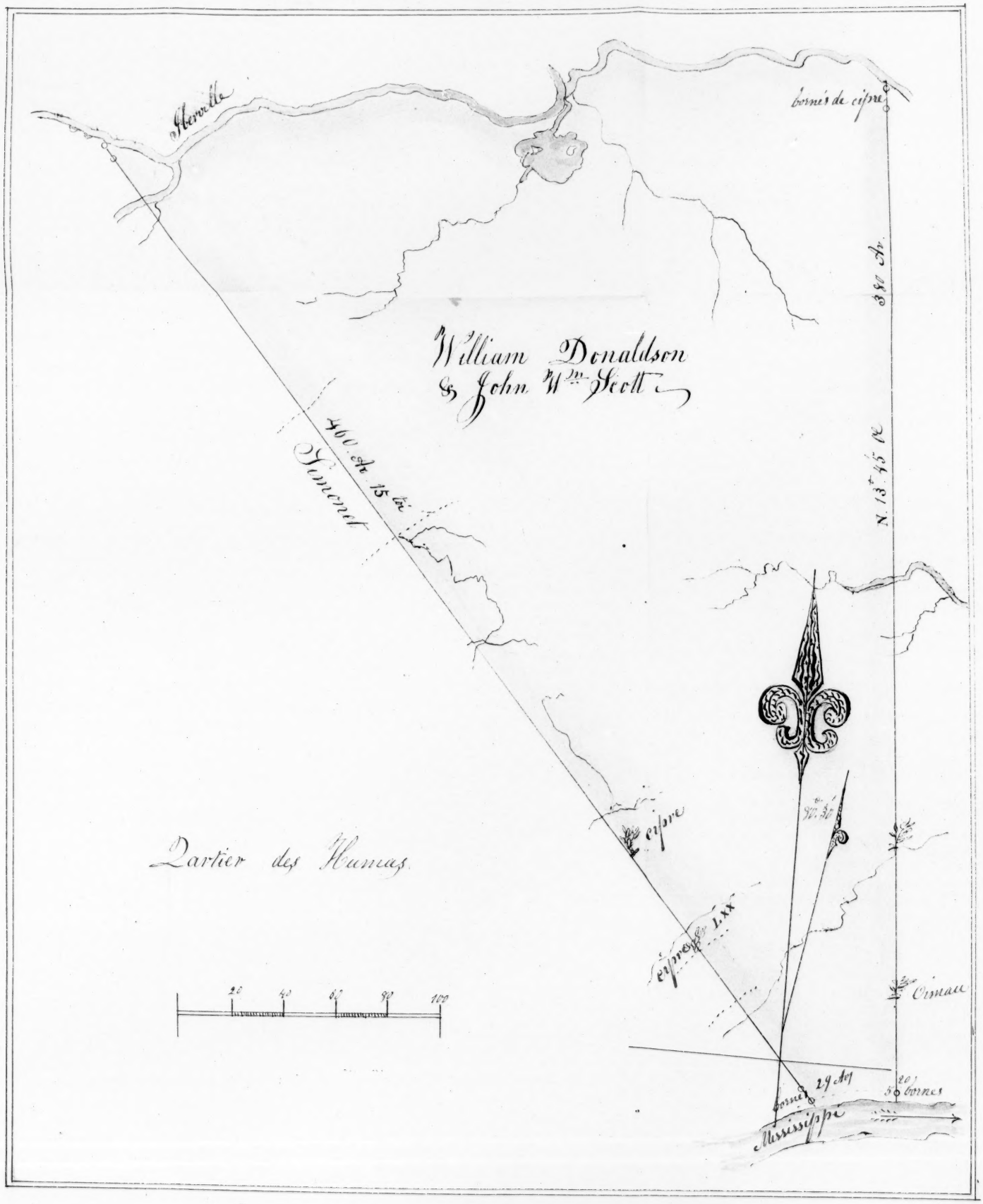
I, John H. Hanna, clerk of the seventh circuit court of the United States of America, in and for the district of Kentucky, do certify that the foregoing adjourned questions and exhibits therein referred to, are truly copied.

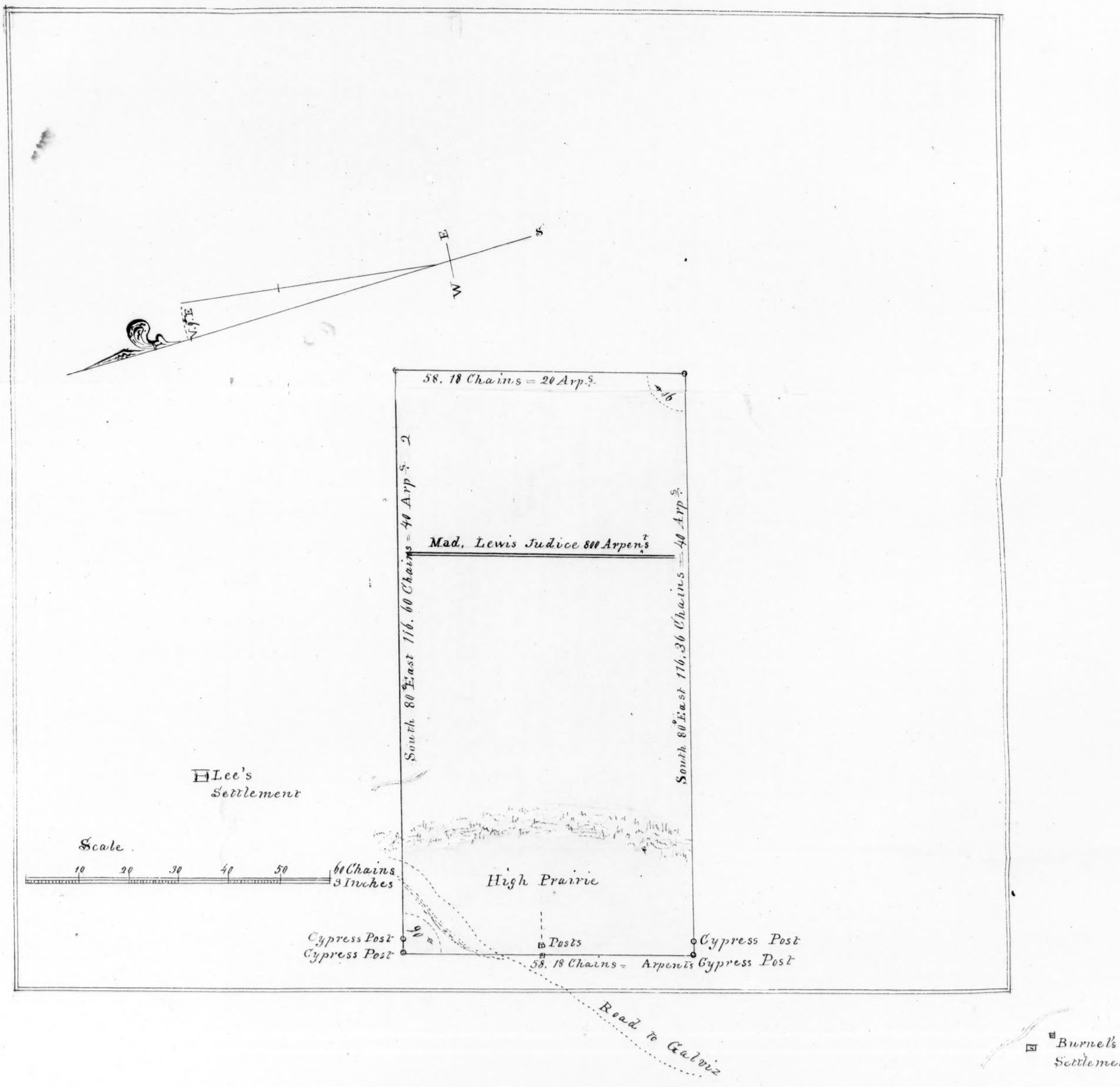
In testimony whereof, I have hereunto subscribed my name, and affix-
[L. S.] ed the seal of said court, this 23d day of December, and in the 58th year of our independence.

JNO. H. HANNA.


N. 12° E.
N. Tellier
Sarah Beck
A. Bridges
D. Hebert
Joseph Hebert
N. 17° 15' E.
John Kling
N. 17° 15' E. 116.36 chs
J. Minor
N. 30 E. 40.72 chs
John Minor
N. 23° 35' E
J. Minor
John Minor
John Minor
N. 33° 35' E
73.52 chs
S. 49° 30' E. 116.30 chs
Baptiste Allain
400 Arpens
S. 40° 30' E. 116.30 chs
N. 0° 30' E. 40.72 chs
N. 10° 05' E. 58.20 chs
116.36 chs
N. 0° 30' E.
116.36 chs
S. 40° 30' E. 116.36 chs
Madame Judice
400 Arpens
Dr. Bieval
Joel Venay
MISSISSIPPI
NEW RIVER
Anderson & Henderson

Comté de la Côte d'Acadie




E
S
W
58. 18 Chains = 20 Arp.s
16
South 80 East 116. 60 Chains = 40 Arp.s 2
Mad. Lewis Judice 800 Arpents
South 80° East 176. 36 Chains = 40 Arp.s
Lee's
Settlement
Scale
10 20 30 40 50 60 Chains
3 Inches
High Prairie
Cypress Post
Cypress Post
Posts
Cypress Post
58. 18 Chains = Arpents
Cypress Post
Road to Galviz
Burnel's
Settlemen

A

PLAN

OF THE

Lots of Lands

in

Cincinnati.

State of Ohio ss. I do certify the within and foregoing to be a true and correct plan of the Lots and lands therein described

OHIO RIVER

Front

Ohio

Pearl

Plum

Elm

Broadway

Main

Walnut

Vine

Sycamore

Broad Way

Street

Columbia

Alley

Alley

Alley

Fourth Street

Square No 1

Square No 2

Square

Third Street

Second or Columbia Street

First or Front Street

Congress Street

Symmes Street or Third Street from the River

Second or Second from the River

Lawrence Street

Ludlow Street

Water Street

Summer house of Genl Harmar

Ingles Office

Major Ruffins

N 45° 3/4 E

N 60. 3/4 E

66 feet

99 feet

100 feet

OHIO RIVER

1, 2, 3, 4. — Patton's Survey 8400
2, 6, 5. — John Roberts Survey 10,000
A. B. C. — and the Ohio River. Offs. 8500
C. B. D. E. — Offs 5,000
F. K. L. — John Howard's 7945.

Christ'n Cooke 480

Hite & Daniel 600

50 A. Cooke

Ohio River.

This line as surveyed by Patton is 1436 poles long from L. Beginning D to the Northwest corner of the Survey.

Beech Corner

Barthow Creek

Mitchell's Creek

South Boundary Corner Patton's Creek

Hard bottom

300

385

In obedience to the order of the United States' Circuit Court for Kentucky District in the case of Hickman & others complainants vs Pruitt, Maitland & others defts. I have proceeded to make the Survey & make return, and report to said Court, that I did on the 2nd day of October 1822 begin at the mouth of Bracken Creek, at the beginning corner of Patton's Survey of 8400 acres, and run 92 poles South on said Patton's line to Bracken Creek, I then found by actual Survey the remainder of said Creek to the Ohio River to be as represented on said plat. I then by actual Survey found the meanders of the Ohio River as represented on said plat. I then found the line drawn from figure 1. to figure 5. to be truly parallel to the general course of the Ohio River from the letter B. (which is the termination of a due West line from figure 1.) & the letter F. & found the length of each of said lines to be six miles when reduced to a straight line, I found the line from 1. to 5. to run to correspond with the lines of John Roberts survey of 10,000 acres, I found the line from figure 1. to letter A. to be South 65° West and to be as near as I can ascertain the upper line of Allens entry of said 10,000 acres in our Survey. The marks 1.A.C.2. Contains 8500 acres. The marks 1.F.B.5. Contains 10,000 acres. The marks 1.D.D.3. Contains 8500 acres. The marks B.F.5. Contains 10,000 acres. The figures 7.7.7.7. Represents C. Clarkes Survey of 50 acres, on which the defendants Maitland resides. The figures 7.7.7.7. Represents C. Clarkes 50 acres. The figures 9.9.9.9. Daniel J. Wells 600 acres, on which the defendant Prospect, Daniel J. Friedrich resides and William Buchanan resides. The figures 9.10.10. Represents the lands of Samuel Hale. Done and finished by me this 19th day of November, 1822.

Jon.a Taylor
Surveyor of B.C.

2.3.4. — Patton's Survey 8400
1.6.5. — John Roberts Survey 10,000
4.B.C. — and the Ohio River Opp. 8500
3.B.E. — Wells 5000
1.K.L. — John Howard 7945.

36 Poles land from the Beginning D
West corner of the Survey.

South
Patton's Bot. Corner
Bracken Creek

Ohio River

Allen's entry 10,000 acres

Daniel J. Wells 600 acres

Robert Gordon 400 acres

Corner of Saml. Fields

Bracken Creek

Ohio River